
SENATE BILL 5149

State of Washington 59th Legislature 2005 Regular Session

By Senators Kohl-Welles, Thibaudeau, Keiser, Kline and Spanel

Read first time 01/14/2005. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to prescription drug marketing and disclosure;
2 adding a new chapter to Title 70 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The purpose of this act is to require
5 disclosure and reporting of gifts, grants, and gratuities made by
6 pharmaceutical manufacturers, directly or indirectly, to any person or
7 entity authorized to prescribe, dispense, or purchase prescription
8 drugs in Washington.

9 NEW SECTION. **Sec. 2.** (1) The definitions in this subsection apply
10 throughout this section unless the context clearly requires otherwise.

11 (a) "Group purchasing organization" means any group of two or more
12 hospitals, nursing homes, or other health care organizations that
13 collectively purchase either directly from a manufacturer or by
14 accessing contracts through another group.

15 (b) "Health benefit plan administrator" means any person or entity
16 who manages or administers a private, self-insured health benefit plan
17 or public employee health benefit plan and any person who manages or

1 administers health benefit plans for another person, including health
2 insuring corporations and sickness and accident insurers under contract
3 to provide managerial and administrative services.

4 (c) "Pharmaceutical detailing, promotional, or marketing
5 activities" means promotional or educational activities by
6 pharmaceutical marketers directed at physicians, their staff, or other
7 health care professionals who prescribe, dispense, or administer
8 prescription drugs.

9 (d) "Pharmaceutical manufacturing company" means an entity that is
10 engaged in the production, preparation, propagation, compounding,
11 conversion, or processing of prescription drugs, either directly or
12 indirectly by extraction from substances of natural origin, or
13 independently by means of chemical synthesis, or by a combination of
14 extraction and chemical synthesis, or any entity engaged in the
15 packaging, repackaging, labeling, relabeling, or distribution of
16 prescription drugs. This term does not include pharmacists licensed
17 under this chapter.

18 (e) "Pharmaceutical marketer" means a person, agent, or
19 representative who, while employed by or under contract to represent a
20 pharmaceutical manufacturing company, engages in pharmaceutical
21 detailing, promotional activities, or other marketing of prescription
22 drugs in this state to any entity or person authorized to prescribe,
23 dispense, or purchase prescription drugs in this state.

24 (f) "Pharmacy benefit manager" means a person or business entity
25 that administers or otherwise assists with prescription drug benefit
26 services including formulary management, rebates, discounted pharmacy
27 network, mail service pharmacies, and electronic claims processing.
28 Such services may be provided on behalf of a health insurer, an
29 employer-sponsored health benefit plan, or an agency of the state.

30 (2) On or before January 1st of each year, every pharmaceutical
31 manufacturing company must disclose to the office of the attorney
32 general the value, nature, and purpose of any gift, fee, or payment
33 made to any person or entity licensed under Title 18 RCW who is
34 authorized to prescribe or dispense prescription drugs, hospital
35 licensed under chapter 70.41 RCW, health benefit plan administrator,
36 group purchasing organization or pharmacy benefit manager, or other
37 entity authorized to purchase prescription drugs in this state. For
38 the purpose of this section, disclosure includes any subsidy or other

1 economic benefit provided in connection with detailing, promotional, or
2 other marketing activities by the company directly or through its
3 pharmaceutical marketers. Disclosure to the office of the attorney
4 general must include both direct payments made by the company, as well
5 as indirect payments made through any other entity at the direction of
6 or with the implied or express knowledge of the company. Disclosure
7 must include the names of all persons or entities receiving the gift,
8 fee, or payment and be made in electronic format in a manner prescribed
9 by the office of the attorney general. Initial disclosure must be made
10 on or before January 1, 2007, for the twelve-month period ending June
11 30, 2006. The office of the attorney general must report annually on
12 the disclosures made under this section to the legislature and the
13 governor on or before March 1st.

14 (3) The office of the attorney general shall keep confidential the
15 names of the recipients of the gifts, fees, or payments and all trade
16 secrets, as defined in RCW 19.108.010. The disclosure form must permit
17 the company to identify any information that is a trade secret.

18 (4) Each company subject to the provisions of this section must
19 also disclose to the office of the attorney general, on or before
20 October 1, 2005, and annually thereafter, the name and address of the
21 individual responsible for the company's compliance with the provisions
22 of this section.

23 (5) The following are exempt from disclosure:

24 (a) Free samples of prescription drugs intended to be distributed
25 to patients; and

26 (b) Any gift, fee, payment, subsidy, or other economic benefit the
27 value of which in the aggregate to any entity including all of its
28 employees is less than twenty-five dollars.

29 (6) The attorney general may bring an action in Thurston county
30 superior court for injunctive relief, costs, and attorneys' fees, and
31 to impose on a pharmaceutical manufacturing company that fails to
32 disclose as required by subsection (2) of this section a civil penalty
33 of not more than ten thousand dollars per violation. Each unlawful
34 failure to disclose constitutes a separate violation.

35 (7) The attorney general may adopt rules to implement the
36 provisions of this section.

1 NEW SECTION. **Sec. 3.** This act may be known and cited as the
2 prescription drug marketing and disclosure act.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute
8 a new chapter in Title 70 RCW.

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